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Summary record of the 2176th meeting
Held at Headquarters, New York, on Monday, 22 March 2004 at 10 a.m.

Chairperson: Mr. Wieruszewski (Vice-Chairperson)

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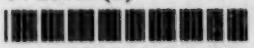

In the absence of Mr. Amor (Tunisia), Mr. Wieruszewski (Poland), Vice-Chairperson, took the Chair.

The meeting was called to order at 10.10 a.m.

General comments of the Committee (*continued*)

Draft general comment on article 2 (*continued*) (CCPR/C/74/CRP.4/Rev.5)

Paragraph 10

1. **The Chairperson** invited the Committee members to continue their discussion of the draft general comment paragraph by paragraph, beginning with paragraph 10.

2. **Sir Nigel Rodley**, who had formulated the draft general comment, drew the Committee's attention to the proposed amendments to paragraph 10. The amended text, beginning at the end of the third line, would read: "where there are substantial grounds for believing that there is a real risk of irreparable harm in the country to which removal is to be effected or in any country to which the person may subsequently be removed, such as the harm contemplated by articles 6 and 7 of the Covenant". The first part reflected research carried out for the Office of the United Nations High Commissioner for Refugees (UNHCR) by two distinguished international lawyers, Sir Elihu Lauterpacht and Daniel Bethlehem. The section beginning "in the country to which removal is to be effected ..." had also been suggested by UNHCR, and was intended to address the phenomenon of "chain deportations" or "chain *refoulement*".

3. **The Chairperson** asked whether the phrase "contemplated by articles 6 and 7 of the Covenant" might be placed after the words "irreparable harm".

4. **Mr. Scheinin** said that that formulation might be a bit restrictive, as other cases might also apply, for example those covered by article 8.

5. **Mr. Kälin** agreed with the version of the text as proposed by Sir Nigel Rodley, as it best reflected current international law. However, although the addition proposed by the Chairperson might indeed be too narrow in scope, the formula proposed by Sir Nigel Rodley — the so-called "such as" approach — was very broad, and might inspire unjustified hopes in some quarters. He would therefore suggest the addition of a phrase such as "in particular", so that the sentence would read "in particular the harm contemplated by articles 6 and 7 of the Covenant".

6. **Ms. Wedgwood** said that the word "may" in the phrase "or in any country to which the person may subsequently be removed" seemed rather open-ended; she wondered whether a phrase such as "may foreseeably" might be used instead. Otherwise, it might be impossible to effect any removal at all without having to request a number of country-specific guarantees as to what might happen.

7. **Ms. Chanet** said that she was in favour of the amendments proposed by Sir Nigel Rodley, and did not share Ms. Wedgwood's misgivings about the wording. However, she was opposed to the insertion of a reference to articles 6 and 7 after the words "irreparable harm", as such a formulation would be too restrictive, and would exclude, for example, women's rights, which were not covered by those articles.

8. **Mr. Kälin**, referring to Ms. Wedgwood's suggestion, noted that the standard in the case of chain deportations was whether there were "substantial grounds for believing" that such deportations might occur. He therefore felt that the formulation proposed by Sir Nigel Rodley was sufficient.

9. **Mr. Shearer** said that he was in favour of the version proposed by Sir Nigel Rodley, but wondered whether an explanatory footnote, or a reference to the relevant jurisprudence, might be added.

10. **Sir Nigel Rodley** said that the addition of the words "in particular", as suggested by Mr. Kälin, would not seriously restrict the text. With respect to Ms. Wedgwood's suggestion concerning the word "may", he shared Mr. Shearer's interpretation. He would be reluctant to add a footnote, as the Committee had decided to try to avoid them, but he would be open to the use of different language, if the Committee felt that was appropriate.

11. **Mr. Yalden** suggested that it might be better, from a stylistic viewpoint, to add the reference to articles 6 and 7, in parentheses, after the words "irreparable harm".

12. **Ms. Wedgwood** suggested that the word "either" should be added before the words "in the country", in order to avoid ambiguity.

13. *Paragraph 10, as amended, was adopted.*

Paragraph 11

14. **Mr. Kälin** noted that the words "alternatively; already" in paragraph 11 were not needed, and should be deleted.

15. *Paragraph 11, as amended, was adopted.*

Paragraph 12

16. **Sir Nigel Rodley** noted that the International Commission of Jurists had requested the addition of the word "political", so that the last part of the paragraph would read "cannot be justified by reference to social, cultural, economic or political considerations within the State".

17. **Mr. Solari Yrigoyen** suggested that the word "political" should be added before the word "social".

18. *Paragraph 12, as amended, was adopted. Paragraph 13 was deleted.*

Paragraph 14

19. **Sir Nigel Rodley** drew the Committee's attention to the following sentence: "Such remedies should be appropriately adapted so as to take account of the special vulnerability of certain categories of person, such as children", which had been suggested by the Chairperson of the Committee on the Rights of the Child. He also drew attention to the sentence beginning, "The Committee notes that ...", which concerned the role of the judiciary in deciding on the direct applicability of the Covenant. That sentence had been proposed and formulated by Mr. Kälin, and supported by the Vice-Chairperson of the Committee on Economic, Social and Cultural Rights. Thirdly, he also proposed — again, at the suggestion of the latter committee — to insert the following phrase between the penultimate and last sentences of the paragraph: "Specialized national human rights institutions endowed with appropriate powers can contribute to this end". It was important to acknowledge the value of such specialized bodies.

20. **Ms. Chanet** said that she had reservations concerning the sentence beginning "The Committee notes ...", as it implied discrimination against legal systems that did not permit direct application of the Covenant. Moreover, courts could not be forced to apply the Covenant, since it was a contract between States. The Committee could do no more than ask States to encourage the courts to recognize direct applicability, if their domestic law allowed individuals to invoke the provisions of the Covenant.

21. **Mr. Amor** suggested that in the French text of the sentence beginning in English "Such remedies should ...", the phrase "*des faiblesses*" should be replaced by the words "*de la vulnerabilité*". Moreover, the sentence should either make no reference to children, or indeed to any particular category or person, or should refer to several categories, such as indigenous peoples and women. If the reference to "children" were to be retained, perhaps it should be amended to "such as children, in particular".

22. **Mr. Yalden** suggested that in the first sentence of the paragraph the phrase "remedies to vindicate" should be replaced, perhaps by a phrase such as "remedies designed to achieve those rights in practice". Furthermore, the word "specialized" should be omitted from the additional sentence proposed by Sir Nigel Rodley, as it might be misunderstood to refer to human rights institutions with limited jurisdictions.

23. **Mr. Scheinin**, referring to Mr. Amor's suggestion, proposed that if a list of categories were to be added, the word "detainees" should be included. However, it might be best not to refer to any categories at all. With respect to Ms. Chanet's observations, he said that Sir Nigel's proposed addition resulted in a balanced text, since it referred to national human rights institutions that, specifically because the Covenant was not formally part of domestic law, often played a key role by receiving complaints and deciding whether there had been a breach of the Covenant. However, he would delete the phrase "that are considered to be self-executing", partly because it repeated the idea of "direct applicability" and partly because it represented just one approach. He agreed with Mr. Yalden that the word "specialized" should be deleted. Finally, he wished to address a question previously discussed by the Committee, namely, the question whether the cessation of the violation was an essential part of the remedy. He proposed that a sentence should be added to that effect, perhaps at the end of the paragraph under consideration.

24. **Mr. Ando** said that he shared the concerns of other members regarding the specific reference to children. He agreed with Ms. Chanet that the Committee should not address too closely the issue of direct applicability and self-executing provisions. The Committee could replace the sentence with general

language, or simply delete it. He supported Sir Nigel Rodley's proposal to add a sentence referring to human rights institutions, and did not object to the addition proposed by Mr. Scheinin. Lastly, he wondered why the word "considerable" had been included in the sentence beginning "The Committee attaches considerable importance to ...".

25. **Mr. Rivas Posada** noted that the Spanish text used the word "executables" in the third line of paragraph 10; that did not appear to be the correct word, and he wondered whether it was an accurate translation of the English version.

26. **Ms. Wedgwood** said she doubted that the proposed sentence beginning "The Committee notes ..." was inclusive enough. It was to be hoped that not just courts or human rights organizations, but all organs of government as well, would take international norms into account when taking their decisions.

27. She believed that Mr. Scheinin's proposal to end the sentence after "provisions of international law", would cause problems in countries having dualist legal systems. Without the final phrase, the sentence would imply that even in a dualist system a judge would have the obligation to make the international norm self-executing — which might not be considered to be within a judge's prerogatives — and that, by failing to allow direct applicability, the judge would be in breach. An approach that allowed judges subtlety in their application of the Covenant might well be more effective.

28. She suggested replacing the word "promoted" by the word "assured", saying that "promoted" had connotations of judicial activism.

29. **Mr. Glélé Ahanhanzo** said that he agreed with Ms. Chanet. He suggested adding language requesting Member States that had not done so to take the necessary legislative measures to give effect to direct applicability.

30. **The Chairperson** said he also agreed with Ms. Chanet, and drew attention to the sentence in paragraph 11 beginning "Article 2 allows a State party ...". The amendment under discussion would be more suitably placed in that paragraph, which dealt with the status of the Covenant under domestic law, following the sentence he had cited.

31. **Mr. Kälin** said that he had proposed the amendment to the paragraph under discussion because the paragraph addressed potential threats to the right to an effective remedy. He had observed a worrying trend, in that courts, particularly in countries having a monist legal system, were not applying international law, saying simply that it was not self-executing. For that reason, he felt that the sentence should be added to paragraph 14, but he would not insist on retaining the amendment if other members were against it.

32. **Ms. Chanet** said that courts could not be considered in the same light as national institutions. Justice was not a national institution. The Covenant spoke of the impartiality and the independence of the courts, not of the independence of national institutions. The Committee could not on the one hand tell States that the courts were independent, and on the other oblige them to put pressure on the courts to apply international norms. That was not the way to achieve direct applicability. Judges did not like to be told what to do, and any attempt to do so might prove counter-productive.

33. **Mr. Yalden** agreed with Ms. Chanet that the sentence was inconsistent with the idea of an independent judiciary.

34. **Mr. Scheinin** said that there was nothing incompatible with the independence of the judiciary in emphasizing its role in the implementation of the Covenant. If national human rights institutions were mentioned, then the judiciary must be mentioned. He suggested retaining the sentence, but broadening its scope by adding, after the phrase "effectively promoted" the following language: " by the judiciary in many different ways, including direct applicability of the provisions of the Covenant, application of comparable constitutional or other provisions of law, or the interpretive effect of the Covenant in the application of national law".

35. **Mr. Glélé Ahanhanzo** said he that agreed with Mr. Kälin's proposal, as complemented by Mr. Scheinin. The questions that the Committee asked States parties on measures they had taken to apply the Covenant had become something of a ritual, and the time had come to take action to resolve the problem. He believed that a more effective way of achieving the desired compliance was to incorporate the sentence proposed by Mr. Kälin, completed by language that reflected his proposal.

36. **Mr. Bhagwati** said that he supported Mr. Scheinin's proposal because, in a common law

system, the provisions of the Covenant were not automatically applicable under domestic law. The judiciary was obliged to take the rights provided for under the Covenant into account when interpreting that law.

37. **Sir Nigel Rodley**, replying to the points raised by the members, said that Mr. Glélé Ahanhanzo's proposal was already reflected in the final sentence of paragraph 11. Mr. Kälin's proposal was not constraining, but merely encouraged judges to be more open and more willing, where they felt they had some discretion, to use that discretion in applying the international law rights guaranteed in the Covenant. He said that it was hard to express it well and he doubted that it would be influential.

38. He said that the word "enforceable" in the first sentence had a legal sense that strengthened "effective", but he would agree to its deletion.

39. **Mr. Scheinin** said that the Optional Protocol used the language "effective and enforceable".

40. **Sir Nigel Rodley** said that, in his opinion, the word "vindicate" implied the ability to require respect for the right, whereas "achieve" lacked any sense of requirement, but he would not insist on retaining "vindicate".

41. With respect to the second sentence, he said that children, and perhaps other vulnerable groups such as the aged or the disabled, were not, by virtue of their biological status, to be considered with adults. Adults could tolerate conditions — for example, denial of liberty — that r. ght in and of themselves be torture to any of those groups. He agreed with the proposal to replace the phrase "such as children" by "including, in particular, children". He agreed that "considerable" could be deleted from the next sentence, and that the word "specialized" could be deleted in the context of "national human rights institutions".

42. **The Chairperson** confirmed the inclusion of Sir Nigel Rodley's proposed second sentence, including the final language, Mr. Kälin's proposed sentence beginning "[t]he committee notes ...", as amended by Mr. Scheinin, as well as the new sentence beginning "[n]ational human rights institutions ...". A final sentence proposed by Mr. Scheinin, which read, "Cessation of an ongoing violation of the Covenant is an essential dimension of the right to an effective remedy.", would also be included.

43. *Paragraph 14, as amended, was adopted.*

Paragraph 15

44. **Sir Nigel Rodley** said that a number of non-governmental organizations had expressed the opinion that the penultimate sentence of paragraph 15 should contain other categories of remedy besides the ones mentioned. He saw nothing controversial in the proposal, which would be consistent with texts currently being considered in the Commission on Human Rights. He suggested that the sentence should be redrafted to read: "The Committee notes that, where appropriate, reparation can involve restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices ...".

45. **Ms. Chanet** pointed out that the principle of non-repetition was also dealt with in paragraph 16. She had reservations about the concept, because it seemed to suggest that somehow violations were acceptable as long as they were not repeated, but if it had to go in she preferred to have it mentioned in paragraph 15 as one in a list of possible forms of reparation, as just proposed, rather than in a separate paragraph.

46. **Mr. Ando** said that, since the sentence on cessation of an ongoing violation had been added to paragraph 14 and paragraph 16 dealt with non-recurrence, perhaps "guarantees of non-repetition" could be safely omitted from the list in paragraph 15.

47. **The Chairperson** pointed out that cessation of an ongoing violation in the present was not the same as a guarantee of non-repetition in the future.

48. **Sir Nigel Rodley** said that there were three different situations to address. Cessation of an ongoing violation related to what was happening in the present to an individual, but cessation did not ensure non-repetition. A guarantee of non-repetition was an assurance given to a specific victim that the violation would not happen again. Preventing recurrence was not a victim-specific remedy, but a means of ensuring that a certain type of violation would not in the future affect others at risk. He did not believe that there would be duplication between paragraphs 15 and 16.

49. **Ms. Chanet** said that she was in favour of retaining the two ideas, but thought that "*renouvellement*", rather than "*répétition*" was the

appropriate word in the French version of paragraph 16.

50. **Mr. Yalden** said that he was troubled by the bald statement in paragraph 15: "the Covenant generally requires appropriate monetary compensation." It was true that in Optional Protocol cases the Committee often said at the end that the State party was required to make appropriate compensation, although it would necessitate a survey to determine whether the Committee's jurisprudence "generally" required it, but it was going too far to say that the Covenant required it. He would prefer to omit the word "monetary" and to eliminate the last sentence: "These modes of reparation will normally be in addition to that of compensation."

51. **Sir Nigel Rodley** said that he had not done the survey required to find the right adverb. However, it was a proposition of general international law laid down by the Permanent Court of Justice during the period between the wars that compensation was the normal form of reparation for any breach of international law, and he would hesitate to depart from it. Of course, there were cases, particularly under article 14, in which the finding itself was sufficient. The key word was "appropriate". Perhaps, by way of compromise, the last sentence could be deleted and the word "additionally" could be added to the sentence listing the forms of reparation, so that it would read: "... reparation can additionally involve ...".

52. **Mr. Yalden** said that "additionally" made the statement stronger rather than weaker.

53. **The Chairperson** said that one of the criticisms of the Committee's procedure was that, in contrast to the European system, its monetary compensation was weak. He proposed the wording "appropriate compensation, including monetary".

54. **Mr. Rivas Posada** said that he also had problems with the paragraph, particularly the last sentence as it was phrased in Spanish. The Committee must not leave the wording of the other language versions entirely to the translators, but must take responsibility for it. The English "normally" had been translated as "como norma", a very strong expression, suggesting that it was a firm rule, whereas in many cases the Committee did not call for monetary compensation.

55. **The Chairperson** agreed that it was important that all three language versions should be consistent.

56. **Mr. Bhagwati** said that to say, "the Covenant generally requires monetary compensation" was too broad. He would prefer a formulation such as "including, in appropriate cases, monetary compensation".

57. **Mr. Shearer** agreed that monetary compensation was not a requirement of the Covenant and suggested that the word "requires" could be replaced by "implies".

58. **Ms. Wedgwood** said that she preferred Mr. Bhagwati's formulation. Unless a survey had been done on countries' attitudes to the compensation implications of articles 9 and 14, the Committee was not in a position to say that it was the consensus position of States parties that reparation generally entailed compensation. Secondly, the importance of the Covenant lay in deterring repetitive violations of human rights, and insistence on the aspect of monetary compensation could detract from that.

59. **Ms. Chanet** said that there was a further linguistic problem, in that the English version used the same term ("compensation" or "compensated") in article 9, paragraph 5, and article 14, paragraph 6, whereas the other language versions used two different terms.

60. **Mr. Scheinin** said that "in appropriate cases" would be too narrow, given the broad practice of the Committee. What the third sentence was reflecting was that only two articles spoke about a specific form of remedy; otherwise the Covenant referred simply to an effective remedy. It was natural, given the international public law background, that compensation had become a standard remedy when no other forms were available. He would propose the following: "The Covenant requires appropriate monetary compensation whenever no other remedy would be effective."

61. **Mr. Yalden** said that it might be the broad practice of the Committee to call for monetary compensation, but it was not the case that the Covenant stipulated it. He would be satisfied if the word "monetary" were deleted, even though compensation generally implied something of monetary value in any case.

62. **Mr. Scheinin** said that the Committee was simply interpreting the right to an effective remedy. Its practice was not separate from the provisions of the Covenant; it was based on it.

63. **Sir Nigel Rodley** said that another possible solution was to say: "The Committee considers that the Covenant generally requires appropriate monetary compensation." However, he would prefer simply to delete "monetary".

64. **Ms. Chanet** said that she preferred Mr. Scheinin's wording, since it was soundly based on article 2, paragraph 3 (c), of the Covenant. However, she was not happy with the word "impose" in the French as a rendering of "requires".

65. **Mr. Scheinin** suggested the composite wording: "The Committee considers that the Covenant requires appropriate compensation whenever no other remedy would be effective."

66. **The Chairperson** said that that wording suggested that parallel forms of reparation were not possible.

67. **Sir Nigel Rodley** said that compensation should not be considered a last resort. That would be a reversal of the sense of the paragraph and the Committee's practice.

68. **Mr. Yalden** proposed that the sentence should read: "The Committee considers that the Covenant generally entails appropriate compensation." "Entails" was somewhat weaker than "requires" and somewhat stronger than "implies".

69. **The Chairperson** said he took it that the Committee favoured that wording and wished to delete the last sentence of the paragraph.

70. *Paragraph 15, as orally amended, was adopted.*

Paragraph 16

71. *Paragraph 16 was adopted.*

Paragraph 17

72. **Sir Nigel Rodley** drew the Committee's attention to the third sentence of the first part of the paragraph, which read: "These obligations arise notably in respect of those violations recognized as criminal under international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), [summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)]." The brackets resulted from a reluctance to assume that summary and arbitrary killings and enforced disappearances were necessarily criminal under international law. Although he did not share that view, acts did not have to be criminal under international law in order for there to be an obligation to prosecute under the Covenant. He therefore proposed deleting the reference to international law and retaining the words in brackets, so that the sentence would read: "These obligations arise in respect of certain violations of the Covenant, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6)."

73. The sentence that followed, as originally expressed, had been thought to be too strong. Of the weaker options offered in brackets, he would prefer to say that the problem of impunity "may be", or better, "may well be", rather than "is often seen as" an important contributing element in the recurrence of the violations. In the last sentence, the new language, "as part of a widespread or systematic attack on a civilian population", was taken from article 7 of the Statute of the International Criminal Court.

74. In the second part of the paragraph, which could be made into a separate paragraph, the words in bold, "and prior immunities and indemnities", had been added to respond to a concern that perpetrators of violations were sometimes relieved of responsibility not only ex post facto but sometimes ex ante, when security forces were told in advance that no matter what actions they took against terrorists, for example, they would be immune from prosecution. Lastly, the new sentence at the end of the paragraph on States assisting each other to bring perpetrators to justice had been suggested by a member of the Committee against Torture.

75. **The Chairperson** pointed out that the reference to paragraph 16 in the first part of paragraph 17 would have to be altered to reflect the final paragraph numbering.

76. **Ms. Wedgwood** said that she supported the proposed amendments to the first part of paragraph 17. However, she wished to make two remarks in connection with the second part of that paragraph. First, she acknowledged the point made by Sir Nigel Rodley in relation to the second half of the first sentence, but pointed out that the language used in the draft ("States parties may not relieve perpetrators from personal legal responsibility") was unforgiving and far stronger than that used in paragraph 15 of general

comment No. 20. Second, she was concerned about the implications of the recommendation made in the third sentence, namely, that the defence of obedience to superior orders should be removed. Although the use of that defence was limited to cases in which the act in question was manifestly unlawful, such as torture, ruling out its use in all circumstances might be construed as an intrusion into the due process of criminal trials. She suggested attenuating the wording.

77. **Mr. Kälin** said he was not convinced that deleting the words "recognized as criminal under international law" from the third sentence of the first part of the paragraph was advisable. He suggested retaining that phrase and inserting the words "do mestic or" after the word "under" in order to show that, pursuant to article 2 of the Covenant, the Committee expected States parties to apply their own domestic law, as well as the relevant provisions of international law, to prevent impunity. The specific references to summary and arbitrary killing and enforced disappearances could be retained, since all those acts were punishable under either domestic or international law.

78. With regard to the new last sentence of the second part of paragraph 17, he felt that the language was a little ambiguous, as it might suggest that violations of the Covenant amounted to criminal acts in themselves. He therefore suggested modifying the sentence to read: "States parties should also assist each other to bring to justice persons suspected of having committed acts in violation of the Covenant that are punishable under domestic or international criminal law".

79. **Sir Nigel Rodley** endorsed Mr. Kälin's proposals. As far as the issue of amnesties was concerned, he had been under the impression that the formula "certain amnesties" had been deliberately chosen in order to take account of the concerns expressed by Ms. Wedgwood. The Committee could not espouse two conflicting points of view: historically, it had automatically called for the prosecution of individuals responsible for violations of, inter alia, articles 6 and 7 of the Covenant, hence it did not make sense to change its position by allowing for the granting of amnesties in such cases. Furthermore, in view of the Committee's jurisprudence (Rodríguez v. Uruguay, for example) and the United Nations stance on impunity, it was inappropriate for the Committee to suggest that States could relieve themselves of their obligations under international law.

80. **Mr. Kälin** supported Sir Nigel Rodley's view that the words "certain amnesties" in the first sentence of the second part of paragraph 17 and the subsequent reference to general comment No. 20 were sufficient to make the situation clear.

81. **Ms. Wedgwood** observed that, in a recent address in Washington, Philippe Kirsch, the President of the International Criminal Court (ICC), had responded to a query about the relationship of the Rome Statute to amnesties by stating that the Court would defer to democratically adopted amnesties when it was in the interests of justice to bring a case. She did not wish to see the Committee adopt a position that was at odds with that of ICC and, furthermore, she was concerned that the unremitting nature of the words "may not relieve" might result in the enunciation of principles that could not be adopted in practice. She suggested deleting the word "legal" from the sentence at issue in order to weaken the language.

82. **Mr. Rivas Posada** said that the words "and certain other" in the last sentence of the first part of paragraph 17 seemed redundant and proposed their deletion.

83. **Sir Nigel Rodley** said that it would be a mistake to narrow the field of that sentence, particularly since article 7 of the Rome Statute listed a number of acts in addition to those mentioned in the first part of paragraph 17 which would violate various provisions of the Covenant. However, he was willing to accept Mr. Rivas Posada's proposal, because the acts mentioned in the third sentence of the first part of paragraph 17 were introduced with the words "such as", which left scope for other unlisted violations.

84. *The first part of paragraph 17, as amended, was adopted.*

85. **Sir Nigel Rodley**, responding to the remarks made by Ms. Wedgwood, said that the comments of Mr. Kirsch, who had spoken in Washington in an extrajudicial capacity, could not be read as a conclusive expression of the Court's position. He was genuinely uncomfortable with the idea that the Committee appeared to be backtracking on its established practice of calling for those responsible for violations of the Covenant to be brought to justice, but was willing to accept Ms. Wedgwood's proposal and

delete the word "legal" if it would allow members to reach a consensus.

86. **Mr. Yalden**, supported by the Chairperson, said that he was inclined to support Ms. Wedgwood's proposal. With specific reference to the South African Truth and Reconciliation Commission, he said that exempting persons from criminal proceedings through the granting of an amnesty did not free them of personal and moral responsibility for their crimes.

87. **Mr. Shearer** said that, while he understood Sir Nigel Rodley's reservations, he endorsed Ms. Wedgwood's proposal. However, he felt that the words "are deemed" in the first sentence of the second part of paragraph 17 were misleading, as they implied derived rather than direct responsibility. He proposed redrafting the phrase in question to read: "Accordingly, where public officials or State agents have committed crimes which are also violations of the Covenant rights ...".

88. **Sir Nigel Rodley** pointed out that the sentence at issue was concerned with establishing individual legal responsibility for violations of the Covenant and not necessarily with punishment for such violations. However, he was happy to accept Mr. Shearer's proposal, and suggested the following wording, which also took account of Ms. Wedgwood's views: "Accordingly, where public officials or State agents have committed violations of the Covenant rights referred to in this paragraph, the States parties concerned may not relieve perpetrators from personal responsibility ...".

89. He was distressed by the reference to the Truth and Reconciliation Commission: the Government of South Africa had been forced to agree to that arrangement as a condition of putting an end to apartheid and reference to the creation of the Commission had been hastily added to the new Constitution as a postamble. It was therefore misguided to conceive of that exercise as being the fruit of a noble agreement between the parties.

90. **The Chairperson** suggested that the Committee should continue its discussion of the second part of paragraph 17 at a later date.

91. *It was so decided.*

92. **Ms. Wedgwood**, speaking on a point of order, said that she would be absent for part of the following week. Consequently, in the event that the draft general comment was adopted in her absence, she wished to register her objection to paragraph 10 and formally dissociate herself from the consensus in that regard.

93. **Sir Nigel Rodley** said that he was uncomfortable with Ms. Wedgwood's intention to dissociate herself from the consensus on paragraph 10, particularly since she had not participated in the discussions relating to that paragraph.

94. **Mr. Amor** stressed the importance of ensuring that the continuity of the Committee as an institution was maintained and that consensus among all members was achieved.

The meeting rose at 1.05 p.m.